Respondent's Witnesses.

HERBERT APTHEKER: (1939 to present) Dr. Aptheker testified as an expert on Marxism-Leninism. Member of a Brooklyn Communist Party Club, 1940-1941; teacher, Jefferson School of Social Science, 1946 to present; editor, *Masses and Main Stream,* 1948 to present; managing editor, *Political Affairs*—about 1950 to present; trustee, Jefferson School, New York City, 1950 to present.

ELIZABETH GURLEY FLYNN: (1937 to present) Member, National Committee, 1938 to present; chairman of Women's Commission of Communist Party, 1945 to present; chairman of Defense Commission, CPUSA, 1948 to present; columnist for *Daily Worker,* 1937 to present; delegate to Congress of Women for Peace, Paris, 1945; member, Political Bureau, later called National Board, 1941-1946, 1948; representative of *Daily Worker* at 80th birthday party for Marcel Cachin in Paris, 1949; representative of CPUSA to French Communist Party Congress, 1950.

JOHN GATES: (1933 to present) Member of Young Communist League, 1931; organizer for the League, 1932-1937; organizer of various clubs in Youngstown and member of the Section Committee, 1933-1937; member, International Brigade in Spanish Civil War in 1938 and rose to rank of Brigade Political Commissar (Lt. Col.); National Executive Secretary, Friends of Abraham Lincoln Brigade, 1939; National Education Director of Young Communist League, 1939-1940; "Head", Young Communist League for New York State, 1940; United States Army, December 17, 1941-January 17, 1946; elected member, National Council Communist Political Association *in absentia,* 1944; elected member of National Committee of Communist Party *in absentia,* 1945; National Vets Director Communist Party, 1946-1947; member, National Committee, Communist Party, 1946 to present; chairman National Legislative Commission, 1947-1951; member, National Board, Communist Party, 1947 until it was discontinued; editor, *Daily Worker,* 1947 to present; chairman, National Review Commission, 1951.

APPENDIX B.

A list of publications of major importance in this proceeding which were received in evidence in whole or in part, follows:

Pet. Ex. 8. *Theses and Statutes of The Third (Communist) International,* published officially by the Communist International in Moscow in 1920. Reprinted by the United Communist Party of America (a former designation of Respondent).

Pet. Ex. 31. *The Communist Manifesto,* by Karl Marx and Friedrich Engels. Copyrighted in the United States in 1948, the 100th Anniversary edition published by International Publishers Company, Inc.[1]

Pet. Ex. 121. *Foundations of Leninism,* by J. Stalin, copyrighted in the United States in 1939, published by International Publishers Company, Inc.

Pet. Ex. 125. *Programme Of The Communist International,* copyrighted in the United States in 1929, published by the Workers Library Publishers, Inc.

Pet. Ex. 137. *Resolutions, Seventh Congress Of The Communist International,* published in 1935 by Workers Library Publishers.

Pet. Ex. 138. *Problems of Leninism,* by J. Stalin, copyrighted in the United States in 1934, published by International Publishers Company, Inc.

Pet. Ex. 139. *State and Revolution,* by Lenin, copyrighted in the United States in 1932, published by International Publishers Company, Inc.

Pet. Ex. 140. *Imperialism, The Highest Stage of Capitalism,* by Lenin, copyrighted in the United States in 1939, published by International Publishers Company, Inc.

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[1] International Publishers Company, Inc., New York City, is headed by Alexander Trachtenburg, a leading member of Respondent.

Pet. Ex. 141. *Working Class Unity-Bulwark Against Fascism*, by Georgi Dimitroff, published by Workers Library Publishers in 1935.

Pet. Ex. 145. *The Communist Party, A Manual On Organization*, by J. Peters, published by Workers Library Publishers, July 1935.

Pet. Ex. 149. *The United Front, The Struggle Against Fascism And War*, by Georgi Dimitroff, copyrighted in the United States in 1938, published by International Publishers Company, Inc.

Pet. Ex. 330. *History Of The Communist Party Of The Soviet Union (Bolsheviks)*, edited and authorized by the Central Committee of the Communist Party of the Soviet Union, copyrighted in the United States in 1939, published by International Publishers Company, Inc.

Pet. Ex. 335. *Mastering Bolshevism*, by J. Stalin, published in 1946 by New Century Publishers.

Pet. Ex. 343. *Strategy and Tactics Of The Proletarian Revolution*, copyrighted in the United in 1936, published by International Publishers Company, Inc.

Pet. Ex. 417. *What Is To Be Done?* by Lenin, copyrighted in the United States in 1929, published by International Publishers Company, Inc.

Pet. Ex. 422. *The Theory Of The Proletarian Revolution*, copyrighted in the United States in 1936, published by International Publishers Company, Inc.

Pet. Ex. 423. *The Dictatorship Of The Proletariat*, copyrighted in the United States in 1936, published by International Publishers Company, Inc.

BEFORE THE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 51-101

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES,

Petitioner,

v.

THE COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,

Respondent.

Order of the Board.

The Board having this day issued its Report in which it finds and determines that the Communist Party of the United States of America, respondent herein, is a Communist-action organization under the provisions of the Subversive Activities Control Act of 1950;

IT IS ORDERED that the said respondent, the Communist Party of the United States of America, shall register as a Communist-action organization under and pursuant to section 7 of the Subversive Activities Control Act of 1950, and

IT IS FURTHER ORDERED that if the Communist Party of the United States of America fails to comply with the registration requirements of said Act, pursuant to the above Order, then each and every section, branch, fraction, or cell of said respondent shall register in accordance with the requirements of said Act.

By the Board:

(Signed) PETER CAMPBELL BROWN, *Chairman.*
(Signed) KATHRYN MCHALE, *Member.*
(Signed) DAVID J. CODDAIRE, *Member.*
(Signed) WATSON B. MILLER, *Member.*

Washington 25, D. C., April 20, 1953.

☆U. S. GOVERNMENT PRINTING OFFICE 1954—285952/P.O. 801

[fol. 2053] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, Petitioner

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent

MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE—Filed August 11, 1954

The Petitioner, by its attorneys, moves for leave to adduce additional evidence in the administrative proceeding before the Respondent. In support of this motion, Petitioner shows the following:

1. This motion is made pursuant to section 14(a) of the Internal Security Act of 1950, 50 U.S.C. 793, which contains the following provisions, among others, concerning proceedings on judicial review of registration orders issued by the Respondent, the Subversive Activities Control Board:

> "If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration."

2. The Petitioner possesses additional evidence material to this case. All of this evidence arose subsequent to the administrative proceeding and most of it subsequent to the submission of this case to the Court. This evidence, particularly when considered in the light of the entire record, [fol. 2054], will establish that the testimony of three of the witnesses for the Attorney General, on which the Respondent relied extensively and heavily in making findings which are of key importance to the order now under review, was false. The additional evidence which Petitioner desires to adduce is described in detail in the affidavit of John J. Abt, one of Petitioner's counsel, annexed to this motion as Exhibit A. In summary, this evidence will establish that Crouch, Johnson and Matusow, all professional informers heretofore employed by the Department of Justice as witnesses in numerous proceedings, have committed perjury, are completely untrustworthy and should be accorded no credence; that at least two of them are now being investigated for perjury by the Department of Justice, and that because their character as professional perjurors has now been conclusively and publicly demonstrated, the Attorney General has ceased to employ any of them as witnesses.

3. If this motion is granted, the Petitioner will introduce oral and documentary evidence to establish the facts set forth in the attached affidavit, including the testimony of Paul Crouch, Manning Johnson, Harvey Matusow, a representative or representatives of the Department of Justice, Bishop G. Bromley Oxnam, attorneys Russell Morton Brown and Robert J. Norvell, Cameron County, Texas, Judge Oscar D. Dancy, employees, past or present, of the Miami Herald and the Miami Daily News, Howard Rushmore of the New York Journal-American, Joseph Alsop, Stewart Alsop, a member or members of the International Organizations' Employees Loyalty Board, and others.

Since the evidence Petitioner seeks to adduce is clearly material to this proceeding, the Court should order, pursuant to section 14(a) of the Internal Security Act of 1950, that Petitioner be allowed to adduce such evidence and any related evidence before the Respondent, and that the Respondent thereafter file with the Court the record of the

evidence so taken, its modified or new findings, if any, and [fol. 2055] its recommendations, if any.

Respectfully submitted,

Vito Marcantonio, John J. Abt, Joseph Forer, Attorneys for Petitioner.

[Certificate of Service omitted in printing]

[fol. 2056] EXHIBIT A TO MOTION

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE

State of New York,
New York County, ss.

John J. Abt, being first duly sworn, deposes as follows:

1. I am one of the attorneys for the Petitioner and make this affidavit in support of its motion for leave to adduce additional evidence in this proceeding.

2. Paul Crouch, Manning Johnson and Harvey Matusow were three of the principal witnesses who testified on behalf of the Attorney General in this proceeding. Crouch testified on direct examination for almost five days, and his direct testimony occupies 387 pages of the typewritten transcript. Johnson testified on direct examination for two days, and his direct testimony occupies 163 pages of the typewritten transcript. Matusow testified on direct examination for one day, and his direct testimony occupies 118 pages of the typewritten transcript.

3. The Respondent relied extensively and heavily upon the direct testimony of these three witnesses to support its findings of fact. The annotated version of the Report of the Board, filed with the Court by the Respondent, reveals that Respondent supported its findings of fact with thirty-six separate references to the testimony of Crouch, twenty-five separate references to the testimony of Johnson and twenty-four separate references to the testimony of Matusow. An appendix attached to this affidavit contains an analysis of the annotated Report, indicating the pages on which these references to the testimony of Crouch, Johnson and Matusow appear, the pages of the Joint Appendix to

which the references are made, and the subject matter of the testimony referred to.

4. As the attached appendix reveals, the Respondent relied on the direct testimony of these three witnesses to support material and, in many instances, key findings of [fol. 2057] fact. The following examples are merely illustrative of the importance which the Respondent attached to their testimony: The Respondent's key finding that Petitioner's 1940 disaffiliation from the Communist International did not alter Petitioner's relationship to that organization was based on the testimony of Crouch. (Annotated Report, 27, 12, 287; Petitioner's brief, 193-95.) The Respondent relied heavily on the testimony of Johnson for its findings that the authority of alleged representatives of the Communist International superseded that of Petitioner's elected leadership, that individuals could not hold positions of leadership in Petitioner without the approval of the Soviet Union, that the first and only allegiance of Communists is to the Soviet Union, and that in the event of war between the United States and the Soviet Union it would be the duty of every Communist to help defeat the United States. (Annotated Report, 110, 173, 229, 231.) Matusow was one of five out of the twenty-two witnesses called by the Attorney General who had been a member of the Communist Party subsequent to the date of the Act. The Respondent relied exclusively upon his opinion testimony to support its finding that Petitioner advocated the violent overthrow of the government in the post-Act period. (Annotated Report, 221; Respondent's brief, 119.) It also relied exclusively on his testimony for its finding that Petitioner received financial aid from the Soviet Union in 1949. (Annotated Report, 163.)

5. Crouch, Johnson and Matusow had all been members of the Communist Party. Crouch and Johnson are professional anti-Communist informers in the sense that they derive (or until recently derived) all of their income from anti-Communist testimony and activity. Matusow has derived substantial income from such testimony and activity. Prior to and at the time he testified in this proceeding and thereafter until May, 1954, Crouch was under contract with the Immigration and Naturalization Service of the Depart-

ment of Justice as a witness in deportation cases. In addi-
[fol. 2058] tion, he testified as a paid government witness in numerous Federal prosecutions of Communists and alleged Communists and appeared frequently as a witness before Congressional Committees investigating Communism. (Petitioner's Brief, 10, n. 14, 15. Subsequent to his appearance in this proceeding, Crouch continued his career as a professional informer and testified in a number of proceedings including the Smith Act trials in Baltimore, Hawaii, Philadelphia and St. Louis.) On information and belief, Crouch was paid by the Department of Justice for these services at the rate of $25.00 per day plus expenses. According to a statement made by him to a reporter for the Washington Daily News, he received more than $8000 from this source in 1953.

6. Johnson was employed by the Immigration and Naturalization Service as a so-called "analyst-consultant" at a salary of $20.00 per day at the time he appeared as a witness in this proceeding. He continued to be employed in that capacity until June or July, 1954, when as hereinafter stated on information and belief, his employment was terminated. His duties as an "analyst-consultant" consisted in testifying on behalf of the government in numerous cases, including deportation proceedings, loyalty matters and the prosecutions of Communists and alleged Communists. He also appeared as a witness before various Congressional Committees.

7. Matusow became a paid informer for the F.B.I. while still a member of the Petitioner. (Petitioner's brief, 10, n. 13; R. 13122.) After his expulsion from the Petitioner in 1951, he was employed as an investigator for the Committee on Un-American Activities of the Ohio Legislature and appeared as a witness before several Congressional Committees. (R. 13111-12, 13171-73.) He made his debut as a witness for the Department of Justice in this proceeding where he was paid the standard rate of $25.00 per day and expenses for his services. (R. 13140.) Subsequent to his appearance before the Board, he testified as a government witness in cases involving the prosecution of Communists and alleged Communists. He has also appeared as
[fol. 2059] a frequent witness before Congressional Committees.

8. Cross examination by Petitioner of each of these professional informers developed a pattern of false statements both in their direct testimony in this proceeding and, in the case of Crouch and Johnson, in prior proceedings. Thus, Johnson admitted from the stand in this proceeding that he had testified falsely in previous cases in order to keep what he conceived to be a commitment to the F.B.I., and stated that he would not hesitate to do so again for the same purpose. (Petitioner's brief, 214; J.A. 669-74.) Again, Crouch testified that while he was a member of the California district bureau of Petitioner in the spring of 1941, he and the other bureau members planned, directed and prolonged a strike at the North American Aviation Company's Inglewood plant for the purpose of paralyzing the production of war planes for Britain and the United States. He further testified that immediately after the German invasion of the Soviet Union on June 22, 1941, the bureau gave orders to end the strike immediately so that production could be resumed at once, and that pursuant to this order the strike was terminated a week or ten days after June 22. (J.A. 444-46.) This story was shown to be false on cross examination when it was established from a news account in the New York Times that the strike had in fact been terminated and work resumed ten days prior to the German invasion. (R. 5967-71; C.P. Ex. 20.) In addition to these examples, the record is replete with instances in which the testimony of Johnson and Crouch in this proceeding was shown to be directly contradictory to their testimony in prior proceedings. It is further replete with instances in which it was shown that Crouch, Johnson and Matusow either embellished stories recounted by them in prior testimony or testified to incidents which they had never previously mentioned in their numerous prior appearances as witnesses. Finally, the attention of the Board was called to the fact that in *Bridges* v. *United States*, 199 F. 2d 811, 841, the Court of Appeals had rejected the testimony of both Crouch and Johnson that [fol. 2060] Bridges had been seen by them in attendance at a Communist Party convention in New York, inasmuch as unimpeachable documentary evidence established Bridges' presence in California at the time of his supposed attendance at the convention.

9. Despite the proven falsity of some of the testimony of these witnesses and the manifest untrustworthiness of all of it, the Respondent accepted their testimony on direct examination implicitly and uncritically (Petitioner's brief, 191-93, 212-13) and as previously shown drew upon it heavily for the findings of fact.

10. Developments subsequent to the proceeding before the Board, the most important of which occurred after the submission of this case to the Court, have established beyond doubt the untrustworthiness of these witnesses and the perjurious character of their testimony, and have compelled the Attorney General to abandon the use of Johnson and Crouch and, as affiant believes, of Matusow as witnesses. These developments, as to each of the three witnesses, are set forth on information and belief in the paragraphs that follow, with annotation showing the source of the information.

11. *Crouch.*

A. In April, 1954, Crouch testified as a witness for the government in the case of *United States* v. *Kuzma, et al.*, a prosecution in Philadelphia for conspiracy to violate the Smith Act. One David Davis is a defendant in that case. Crouch, in his testimony, identified Davis as a Communist and testified with great particularity about his activities. Crouch testified that from 1928 through the mid-thirties he had seen Davis at Communist Party meetings, heard him make reports, watched him take notes, and joined with him in planning the infiltration of the armed forces. On cross examination, defense counsel produced the transcript of Crouch's 1949 testimony on behalf of the government in the case of *United States* v. *Bridges, et al.* (referred to above), a prosecution for alleged false statements that Harry Bridges was not a member of the Communist Party. On cross examination in that case, [fol. 2061] Crouch was repeatedly questioned about Davis and repeatedly stated that he had no knowledge of him, and that while he knew of other Davises in the Communist Party, he had never heard of David Davis. ("Matter of Fact," by Joseph and Stewart Alsop, New York Herald Tribune, May 19, 1954.)

B. In 1950, Crouch testified before the Committee on Un-American Activities of the California Legislature that, in 1941, he had attended a closed meeting of the Communist Party at the home of Dr. J. Robert Oppenheimer in Berkley, and that among those in attendance were Dr. Oppenheimer and Joseph W. Weinberg, a nuclear physicist. In September, 1952, Weinberg was indicted for perjury in the District of Columbia. One of the counts in that indictment, based on the Crouch testimony, was that Weinberg had falsely denied attendance at Communist Party meetings in testimony before the House Committee on Un-American Activities. Investigations made by the defendant and Dr. Oppenheimer produced documentary evidence that established that neither of them was in or near Berkley at or about the time of the alleged meeting testified to by Crouch. When these facts were brought to the attention of the Assistant United States Attorney in charge of the matter, the count in question was dismissed. United States District Judge Holtzoff who presided at the Weinberg trial (in which the defendant was acquitted on the remaining counts) said of Crouch: "I am amazed that the Immigration and Naturalization Service should employ him as a member of its staff." ("Matter of Fact," by Joseph and Stewart Alsop, Washington Post and Times-Herald, April 16, 1954.)

C. In a brief filed with the Board of Immigration Appeals in December, 1953 and argued on June 24, 1954, in *In the Matter of Jacob Burck,* A.R. No. 4,587,587, counsel for Burck submitted the results of their investigation of a number of sworn statements made by Crouch as follows:

(1) Crouch testified (in *In re Blichfeld,* before the Immigration and Naturalization Service) that in 1946 he had discussed Communism with an F.B.I. agent in Brownsville, [fol. 2062] Texas, in the presence of County Judge Oscar C. Dancy who, according to Crouch, was his personal friend. However an affidavit by Judge Dancy denies this testimony in its entirety and states that he has never in his life met Crouch.

(2) Crouch testified in the *Burck* case that in 1946 he was employed in Florida as the state publicity director of the CIO and editor of the Union Record which he stated was the official organ of the CIO in Florida. However,

affidavits of the leading officials of the Florida CIO state that there has never been such a post as CIO publicity director for the state and that the Union Record was never an official organ of the CIO.

(3) Crouch testified in the *Burck* case that in 1947 he became the editor of the Dade County, Florida, News. However, affidavits of the Dade County tax collector, the clerk of the circuit court, the postmaster and the editor of a local paper all state that there is no record that such a paper was ever in existence in the county.

(4) Crouch testified in the *Burck* case that in 1948, he was employed as an editor of the Miami Herald. However, affidavits from four responsible officers and employees of the Miami Herald state that Crouch was employed by it for five months in the teletype department—a mechanical department—and was at no time engaged in editorial or reportorial work.

(5) Crouch testified in the *Burck* case that his last employment before becoming a professional witness was with the Miami Daily News where he was employed in a supervisory capacity in connection with copy production and, in addition, wrote feature articles from time to time. However, affidavits from five responsible officers and employees of the Miami Daily News state that Crouch was employed by it for nine months exclusively as a tape-cutter in the teletype punching room, that he was never employed in a supervisory capacity, had nothing to do with copy production, and did no writing for the paper whatsoever. (Brief and affidavits *In re Burck*, referred to above.)

[fol. 2063] E. In May, 1934, Joseph and Stewart Alsop, syndicated newspaper columnists who had written a number of articles exposing the dubious role of Crouch and other professional informers employed by the Department of Justice, wrote a widely publicized column describing Crouch's false testimony in the *Kuzma* case and requested the Attorney General to investigate Crouch's credibility. Thereupon, the Attorney General announced that the Department of Justice was undertaking such an investigation. On June 24, 1954, immediately after the oral argument in the *Burck* case, the Attorney General further announced that the evidence of Crouch's alleged perjurious testimony presented to the Board of Immigration Appeals in that case would be added to the study of Crouch which was then under

way in the Department. ("Matter of Fact", New York Herald Tribune, May 19, 1954; Washington Post and Times-Herald, June 25, 1954.)

F. On May 28, 1954, as a result of the charges made against Crouch and the pending investigation of his testimony by the Department of Justice, the Department cancelled his scheduled appearance as a witness before the Board in the pending proceeding against the Veterans of the Abraham Lincoln Brigade. Since that date, Crouch has not received any pay from or appeared as a witness for the Department. In retaliation for the discontinuance of his services and pay, Crouch, on June 30, 1954, wrote a letter to the Director of the F. B. I. requesting an investigation of the members of the Attorney General's staff responsible for this action. Thereafter, he requested the Senate Committee on Government Operations and the Senate Judiciary Committee to investigate Attorney General Brownell and Assistant Attorney General Rogers, charging that the pending investigation of his credibility has given aid and comfort to enemies of the United States and might require the reopening of some sixty hearings and trials in which he had been a principal witness, including this proceeding. (Washington Daily News, July 1, 1954; New York Times, July 9, 1954.)

12. *Johnson.*

A. On May 25, 1954, the International Organizations [fol. 2064] Employees Loyalty Board conducted a hearing with respect to the loyalty of Dr. Ralph J. Bunche. Johnson was one of the two persons responsible for the charges against Dr. Bunche and testified at the hearing. Johnson testified that Bunche had been a member of the Communist Party in the 1930's and that in 1934 he and Bunche had attended a closed strategy meeting of leading Negro Communists in Washington, D. C. This testimony was flatly denied by Dr. Bunche and by a witness who had been present at the meeting in question. The Loyalty Board rejected Johnson's testimony and announced that it had completely cleared Dr. Bunche of all the charges against him. Thereafter, the chairman of the Loyalty Board transmitted the transcript of the hearing to the Department of Justice with the request that Johnson's testimony be investigated for possible perjury. The requested investigation is now under

way in the Department. ("Matter of Fact," by Joseph and Stewart Alsop, New York Herald Tribune, July 2, 1954; *id.*, Washington Post and Times-Herald, July 11, 1954.)

B. On July 1, 1954, the Department of Justice terminated Johnson's employment, and the Department has discontinued the use of his services as a witness. (New York Journal-American, July 6, 1954; Daily Worker, July 8, 1954.)

13. *Matusow.*

A. In June, 1954, the press reported that Bishop G. Bromley Oxnam had stated in speeches made in Westminister, Maryland and Evanston, Illinois that Matusow had recently told him that he, Matusow, had undergone a religious experience, that he had "lied, and lied for the committees" and "wanted to undo all the lies I have told." (Washington Post and Times-Herald, July 13, 1954.) Subsequently, in an interview with the press on July 13, 1954, Bishop Oxnam stated (*id.*, July 14, 1954):

> "The truth is that Mr. Matusow told he had had a religious experience and was seeking each person about whom he had falsified in order to apologize and get right with the people he had harmed. He told me he had [fol. 2065] lied concerning numerous individuals."

B. On July 30, 1954, the Commission on Public Relations and Methodist Information of the Methodist Church released to the press the text of a letter from J. Howard McGrath, the former United States Attorney General, to Charles C. Parlin, attorney for Bishop Oxnam, stating the following facts: Late in April, 1954, Matusow was interviewed by Russell Brown and Robert Norvell, law associates of McGrath. Matusow stated to them that he had lied about many people concerning their connection with Communism and that he was writing a book to be entitled "Blacklisting (or Blackmailing) Was My Business" which would expose and detail his false statements connecting various persons with Communism. In a memorandum dictated after the interview, Brown stated:

> "He (Matusow) said in so many words, 'You should know that I am not to be trusted under any circum-

stances. I have betrayed everybody who ever befriended me. If I give you some information which is helpful, you check it 100% because I don't even trust myself.' "

(Copy of press release referred to above.)

C. As a result of the foregoing incidents, affiant believes that the Department of Justice will discontinue the use of Matusow as a witness.

14. The compelling reasons for granting Petitioner's motion were cogently stated in a New York Times editorial entitled "The Informers", published on July 8, 1954, which reads in part as follows:

"The real problem of the informer arises . . . when questions of a man's personal life, his thoughts, opinions or political activities are under scrutiny. Here is where employment of the informer may become dangerous to individual rights and liberties. The informer smacks of the police state; and we think that most [fol. 2066] Americans instinctively shrink from his use. It is reasonable to suppose that the professional, paid informers, such as those on the rolls of the Justice Department who can be said to make their living at this game, feel the necessity of continuing to 'produce' if they are not to give up their lucrative occupation.

". . . Some informers have been caught in direct contradictions of testimony that smell strongly of perjury. If the Justice Department feels it essential to use informers in the conduct of its anti-Communist prosecutions under the law, it has the unmistakable duty to follow up relentlessly any indication that they may not be telling the truth. As the law-enforcement agency of our government, the Justice Department has a primary obligation to maintain its own integrity and that of its agents."

John J. Abt.

Subscribed and sworn to before me this 9th day of August, 1954. Abbott L. Levine, Notary Public, State of New York, No. 24-7509750. Qualified in Kings County. Commission Expires March 30, 1956.

[fol. 2067] APPENDIX TO MOTION

References to the Testimony of Crouch, Johnson and Matusow Contained in the Annotated Report of the Board

The tables below list each reference in the Annotated Report of the Board, filed by it with the Court, to the testimony of Crouch, Johnson and Matusow, respectively, indicating the page of the Annotated Report (designated as A.R.) where the reference occurs, the pages of the Joint Appendix (designated as J.A.) to which reference is made and the subject matter of the finding in support of which the testimony of the witness is cited.

CROUCH

A.R. Page	J.A.Page	Subject
27	421–23	Policies and Directives—Organization and Leadership
93, n. 1	441–42	Policies and Directives—Imperialism
107	425–28	Policies and Directives—Democratic Centralism
110	424	Policies and Directives—Foreign Representatives in the United States
110	425–28; 431–32	Policies and Directives—Foreign Representatives in the United States
110	423	Policies and Directives—Foreign Representatives in the United States
110	461–62	Policies and Directives—Foreign Representatives in the United States
111	424	Policies and Directives—Foreign Representatives in the United States
112	426–28	Policies and Directives—Foreign Representatives in the United States
136	403–05; 413	Policies and Directives—Youth Work
136–37	419–21	Policies and Directives—Youth Work
153	448–50	Non-Deviation
159	401–02	Foreign Financial Aid
161	407–09	Foreign Financial Aid
165	404–05	Foreign Training
170	439–40	Foreign Training
171	400–05; 411–12	Foreign Reporting
190	433–35	Foreign Disciplinary Power
193	416–17; 434–35	Secret Practices
195	434–35	Secret Practices
200	430–33	Secret Practices
201	432–33	Secret Practices
202	432–33; 443	Secret Practices
202	409–10	Secret Practices
204	429–30	Secret Practices
206	442–43	Secret Practices
207	428; 442–43	Secret Practices
208	425–32	Secret Practices
209	425–33; 456–58	Secret Practices
209	442–43	Secret Practices
214	416–24	Secret Practices
221	437–38; 462	Allegiance
229	435–36	Allegiance
229	436–37	Allegiance
229	454–55	Allegiance
231	436	Allegiance

[fol. 2068]

JOHNSON

A.R.Page	J.A.Page	Subject
24	656	Policies and Directives—Organization and Leadership
24	668	Policies and Directives—Organization and Leadership
85–6	652–53	Policies and Directives—Imperialism
106, n. 1	647–48; 659–60	Policies and Directives—Democratic Centralism
110	660–61	Policies and Directives—Foreign Representatives in the United States
112	660–61	Policies and Directives—Foreign Representatives in the United States
112	664–65	Policies and Directives—Foreign Representatives in the United States
140	648	Policies and Directives—National Liberation
140	654–55	Policies and Directives—National Liberation
155	668	Non-Deviation
159	656–57	Foreign Financial Aid
162	656–57	Foreign Financial Aid
165–66	657–58	Foreign Training
169	659	Foreign Training
173	647–48; 658–59	Foreign Reporting
194	661–62	Secret Practices
195	662, 667–68	Secret Practices
197	661–62	Secret Practices
203	667	Secret Practices
208	661–65	Secret Practices
209	648–49; 664–65	Secret Practices
213	667–68	Secret Practices
221	649; 675–77	Allegiance
229	650–52	Allegiance
231	651–53	Allegiance

MATUSOW

A.R. Page	J.A. Page	Subject
76	1057	Policies and Directives—Marxism-Leninism
76	1048–49	Policies and Directives—Marxism-Leninism
86	1055–58	Policies and Directives—Imperialism
110	1032	Policies and Directives—Foreign Representatives in the United States
112	1032; 1037–38	Policies and Directives—Foreign Representatives in the United States
116	1056–57	Policies and Directives—The Communist Press
128	1041–42	Policies and Directives—Trade Union Work
133–34	1024–32	Policies and Directives—Youth Work
134	1028–29	Policies and Directives—Youth Work
163	1035–37	Foreign Financial Aid
174	1031–33	Foreign Reporting
174	1037–38	Foreign Reporting
195	1051–53	Secret Practices
196	1026–27	Secret Practices
197	1024–27	Secret Practices
198	1053–55	Secret Practices
201	1034–35	Secret Practices
203	1042–44	Secret Practices
204	1024–26	Secret Practices
207	1027	Secret Practices
211	1042–44	Secret Practices
219	1057	Allegiance
220	1048–49	Allegiance
221	1054–56	Allegiance

[2069] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE—Filed August 20, 1954

STATEMENT

Pursuant to section 14(a) of the Internal Security Act of 1950, the Communist Party of the United States of America, petitioner herein, has moved the Court to order that the petitioner be allowed to adduce additional evidence before the Subversive Activities Control Board and that the Board thereafter file with the Court the record of the evidence so taken, its modified or new findings, if any, and its recommendations, if any.

In support of its motion, the petitioner alleges that it is in possession of additional evidence which will establish that the testimony of three of the witnesses called by the Attorney General was false. It further states that all of this evidence arose subsequent to the administrative proceeding and that most of it arose subsequent to the sub-[fol. 2070] mission of this case to the Court. The additional evidence which is the subject matter of the instant motion is set forth in paragraphs 11, 12, and 13 of an affidavit attached to the motion. It is readily apparent that the additional evidence is confined entirely to collateral matters which, at most, bear on credibility. None of the additional evidence touches the substance of the testimony before the Board of the witnesses in question. None of the additional evidence is concerned with issues of fact determined by the Board.

I. The Hearing Should Not Be Reopened for the Receipt of Evidence Merely Going to the Issue of Credibility and Not to Any Fact at Issue.

An application for leave to adduce additional evidence before an administrative tribunal is addressed to sound judicial discretion. *Southport Petroleum Co.* v. *National*

Labor Relations Board, 315 U.S. 100 (1942). Stated generally, the tests to be applied in determining the merits of such an application are the materiality of the evidence sought to be adduced and the sufficiency of the grounds for failure to produce such evidence at the hearing. *Strauss* v. *Berkshire,* 8 Cir., 1943, 132 F. 2d 530.

It is submitted that where the additional, or after-discovered, evidence merely goes to the issue of credibility and not to any fact at issue, the hearing should not be reopened for its reception. In *National Labor Relations Board* v. *J. S. Popper, Inc.,* 3 Cir., 1940, 113 F. 2d 602, the Court of Appeals for the Third Circuit so ruled, holding that the National Labor Relations Board had correctly refused to reopen a hearing to receive impeaching evidence, going solely to the issue of credibility and not to any fact at issue. The Court in its reasoning pointed out that there was an analogy to *United States* v. *Parker,* 3 [fol. 2071] Cir., 1938, 103 F. 2d 857, 863, a criminal case which ruled that after-discovered evidence merely affecting credibility would not justify a new trial.

While the petitioner's motion to reopen the hearing for the taking of additional evidence is not, strictly speaking, a motion for a new trial based upon newly discovered evidence, it strongly partakes of the nature of the latter. Especially is this true since the testimony has been closed more than twenty-five months, the Board has made its determination, and the matter has been briefed and argued before this Court. Certainly the rationale for the determination of either motion is the same, namely, the requirement of a full and fair hearing consistent with the avoidance of unwarranted and unnecessary delay in the judicial process. The criteria for the awarding of a new trial on the ground of newly discovered evidence would appear to be pertinent to the disposition of a motion to reopen an administrative hearing for the taking of additional evidence.

This Court has set forth those criteria succinctly in *United States* v. *Thompson,* D. C., 1951, 188 F. 2d 652, as follows:

> (1) The evidence must have been discovered since the trial;

(2) the party seeking the new trial must show diligence in the attempt to procure the newly discovered evidence;

(3) the evidence relied on must not be merely cumulative or impeaching;

(4) the evidence must be material to the issues involved;

(5) the evidence must be of such a nature that in a new trial it would probably change the result.

[fol. 2072] In the *Thompson* case, the newly discovered evidence tended to discredit the only prosecution witness. Yet this Court affirmed the denial of the motion by the lower court. Subsequently, in *Murphy* v. *United States*, D. C., 1952, 198 F. 2d 87, this Court followed the *Thompson* case in a similar circumstance, saying in a per curiam opinion:

> "As this court has said in *Thompson* v. *United States*, 1951, 88 U.S. App. D.C. 235, 188 F. 2d 652, to obtain a new trial because of newly discovered evidence, the evidence relied on must not be merely cumulative or impeaching."

It is abundantly clear from the moving papers of the petitioner that it seeks to have the hearing reopened solely for the reception of material bearing on the credibility of three of the twenty-two witnesses called by the Attorney General. In each instance, the additional evidence which the petitioner asks leave to adduce pertains to collateral matters not at issue in the proceedings before the Board. No additional evidence is alleged which controverts the affirmative testimony upon which the Board based any of its findings. This is a fact despite the bold claim in the petitioner's motion that the additional evidence will establish that the testimony of three witnesses was false. A reopening of the hearing would result in further delay in the final determination of an already lengthy matter for the sole purpose of trying collateral matters unconnected with the issues involved.

II. The Three Witnesses in Question Were Subjected to Lengthy and Searching Cross-Examination at the Time of the Hearing on the Issue of Credibility.

The witnesses Paul Crouch, Manning Johnson, and Harvey Matusow were each cross-examined at length at the time of the hearing. As an examination of the record will disclose, wide latitude was permitted petitioner's counsel [fol. 2073] in their cross-examination. The affidavit accompanying the motion of the petitioner points out that the direct testimony of Paul Crouch occupies 387 pages of typewritten transcript. It is also true that his cross-examination occupies 810 pages. As the petitioner points out, the direct testimony of Manning Johnson occupies 163 pages of typewritten transcript; however, his cross-examination covers 194 pages. Finally, while the direct testimony of Harvey Matusow occupies 118 pages, according to the petitioner, his cross-examination occupies 102 pages.

Most of the cross-examination of these witnesses was on collateral matters and was obviously designed to shake their credibility. Further evidence of a collateral nature and further cross-examination on collateral matters would be cumulative and would accomplish nothing. Certainly a reopening of the hearing for such a purpose would be unwarranted, and would accord neither with the dictates of common sense nor the requirements of law.

III. The Findings of the Board Are Supported by Ample Evidence of Testimonial and Documentary Character Apart from the Testimony of the Three Witnesses Sought to Be Discredited.

Contrary to the impression which the petitioner seeks to convey by its moving papers, the testimony of Paul Crouch, Manning Johnson, and Harvey Matusow was not of decisive importance at the hearing. Their testimony can be ignored in toto and the ultimate determination of the Board will remain amply supported by evidence both testimonial and documentary in character. The case presented by the Attorney General is supported by the testimony of twenty witnesses and by more than four hundred and sixty docu-

ments. It is apparent from the record and from the Annotated Report of the Board that the result reached would be the same without the testimony of Crouch, Johnson, and Matusow.

[fol. 2074] In paragraph 4 of the affidavit accompanying its motion, the petitioner asserts that the Board relied on the testimony of Crouch, Johnson, and Matusow to support material and key findings of fact. The petitioner has attached an appendix setting forth the instances in which testimony of these witnesses were cited in support of Board findings; and it has described, in paragraph 4 of the affidavit, what it calls "merely illustrative" examples of the importance which the Board attached to their testimony. As will be demonstrated herein, even these "illustrative" examples, which it is reasonable to assume constitute the petitioner's principal showing, are amply supported by other credible evidence of record in all but one instance. Such other evidence would substantiate the Board's findings in these particulars even were the testimony of the questioned witnesses ignored.

A. The Illustrative Examples

1. Paul Crouch

The petitioner asserts that the Board's finding that the petitioner's 1940 disaffiliation from the Communist International did not alter its relationship to that organization is based upon the testimony of Paul Crouch. The direct evidence upon which the finding is based is found on pages 26 and 27 of the Annotated Report. As is plainly demonstrated on those pages, the witnesses John Lautner and Frank Meyes, as well as Crouch, testified to the effect that the organizational disaffiliation of the petitioner was one of expediency, that it did not change fundamentally the petitioner's relationship with the Soviet Union, and that it in no way affected the petitioner's attitude on the question of proletarian internationalism. This matter was raised by the petitioner at pages 193-195 of its brief filed with this Court, and it is fully discussed in the brief of the respondent, pages 123-125.

It is apparent that the testimony of Paul Crouch is corroborated in substance by that of two other witnesses

who formerly held important positions with the petitioner. [fol. 2075] Although the testimony of Crouch is credible and entitled to weight, it is not indispensable to the finding.

2. Manning Johnson

a. It is stated in the affidavit that the Board relied heavily on the testimony of Manning Johnson for its finding that the authority of representatives of the Communist International superseded that of the petitioner's elected leadership. This statement in substance is found at page 110 of the Annotated Report. The Report itself points out that Johnson's statement is but one example. Another, immediately following in the Report, reads: "Similarly, Petitioner's witness Lautner shows that when a Comintern representative spoke at Party meetings, no one questioned his decisions and they were accepted as the Party line." An actual instance of a Comintern representative, Gerhart Eisler, exercising authority over the leadership of the petitioner is taken from the testimony of Joseph Kornfeder and set forth on pages 111 and 112 of the Annotated Report. At the risk of belaboring the point, attention is invited to the striking testimony of Benjamin Gitlow to the effect that a factional struggle in the petitioner was resolved in Moscow, and representatives of the Comintern with power to nullify any decision of any committee of the petitioner and to expel any member were sent to implement the solution (Annotated Report, pp. 25, 104).

It is obvious from a perusal of the Annotated Report that the findings concerning the existence, activity, and authority of Comintern representatives in the United States are based upon a multitude of evidence from many sources. (*e.g.*, Annotated Report, pp. 22-25, 104, 109-112). These findings are not dependent upon the testimony of Johnson to any material degree.

b. According to the petitioner, the Board relied heavily on the testimony of Johnson in finding that individuals could not hold positions of leadership in the petitioner [fol. 2076] without the approval of the Soviet Union. On page 173 of the Annotated Report, the Board, in treating the subject of reporting to the Soviet Union, stated, "As

positions of leadership in Respondent could not be held without approval of the Soviet Union, advancement in the Party depended in part upon the reflection of a member's work in these reports." Testimony of Johnson is cited as a pilot citation to a finding which is based upon a considerable quantity of other evidence of record set forth in other sections of the Annotated Report. For example, Stalin's settlement of the above-mentioned factional dispute of 1929 whereby the leadership of the minority faction was placed in control of the petitioner is strong support for the statement (Annotated Report, pp. 25, 26, 187). Further support will be found at pages 188 and 189 of the Annotated Report.

The pilot reference to Johnson's testimony at page 173 of the Board's Annotated Report is a minor portion of the evidence upon which the Board found that leadership in the petitioner required the approval of the Soviet Union.

e. The petitioner further claims that the Board relied heavily on the testimony of Johnson for findings that the first and only allegiance of Communists is to the Soviet Union, and that in the event of war between the United States and the Soviet Union, it would be the duty of every Communist to help defeat the United States.

In its Annotated Report, the Board devoted eighteen pages to the subject of allegiance, culminating in the finding that the leaders and members of the Communist Party "consider the allegiance they owe to the United States as subordinate to their loyalty and obligations to the Soviet Union." (Annotated Report, pp. 215-233). This finding and the subsidiary findings pointed to by the petitioner are based upon extensive and varied testimonial and documentary evidence, as the briefest glance at the cited pages of the Annotated Report will show. That the contribution of Johnson's testimony is merely cumulative [fol. 2077] and corroborative and in no sense necessary to the findings cannot reasonably be disputed. It was not heavily relied on.

3. Harvey Matusow

a. In paragraph 4 of the affidavit accompanying the petitioner's motion, it is alleged that the Board relied ex-

clusively upon the opinion testimony of Harvey Matusow to support its finding that the petitioner advocated the violent overthrow of the Government in the post-Act period. Once again, the petitioner has overstated the facts. In finding that the petitioner advocates forceful overthrow, the Board relied to a great extent on the contents of the so-called classics of Marxism-Leninism and on their continued use in the post-Act period, in addition to the testimony of witnesses whose membership spanned the entire existence of the Party (Annotated Report, pp. 216-222). There can be little doubt that the Board would have made the same finding with complete justification had there been no testimony by Matusow before it.

b. The affidavit further states that the Board relied exclusively on Matusow's testimony for its finding that the petitioner received financial aid from the Soviet Union in 1949. This is true. However, as the Board pointed out on page 137 of its brief filed with this Court, the finding on financial aid is a comparatively unimportant one in relation to the whole record. Surely it cannot be reasonably argued that the presence or absence of the Matusow testimony would affect the result reached by the Board.

B. The Analytical Appendix

In an appendix attached to the affidavit as a part of the petitioner's moving papers, there is listed in tabular form references to the testimony of Paul Crouch, Manning Johnson, and Harvey Matusow as found in the Annotated Report. The affidavit contains the information that these references total thirty-six in the case of Crouch, twenty-[fol. 2078] five in the case of Johnson, and twenty-four in the case of Matusow. It is highly likely that were identical tabulations made in the case of each of the seventeen other witnesses providing the bulk of the testimony presented by the Attorney General a similar result would be forthcoming. It would not be unreasonable to expect that certain of the others would tabulate significantly higher in number of references. There is no doubt that documentary evidence would tabulate much higher. There are literally hundreds and perhaps thousands of citations in the An-

notated Report. The futility of engaging in the awesome task of making such tabulations, which when completed prove nothing of real aid to the determination of the petitioner's motion, would militate against it even if time permitted.

Investigation of the individual references in the appendix demonstrates that in most instances they are accompanied by citations to the testimony of other witnesses and to documentary evidence in substantiation of the same point. In most instances, the citations to Crouch, Johnson, or Matusow could be stricken and ample authority would remain. This Court can easily satisfy itself that the above is true by checking a few of the references at random. Beyond showing that the testimony of the three witnesses in question was used by the Board in its Report, the tabulation proves nothing.

It should be borne in mind that the conclusion of the Board that the petitioner is a Communist-action organization, as defined in section 3 of the Internal Security Act of 1950, is arrived at on the basis of a number of subsidiary findings which comport with the criteria set forth in section 13(e) of the Act. These subsidiary findings in turn depend upon a vast number of individual findings of fact. Were the testimony of Paul Crouch, Manning Johnson, and Harvey Matusow entirely absent from the record, a relative few of the myriad individual findings might be disturbed. [fol. 2079] The effect could be no greater. It is nonsense to maintain that the result would be in any way changed. The petitioner would still be found a Communist-action organization by overwhelming evidence. A hearing should not be reopened for the reception of evidence which could not change the result. *National Labor Relations Board* v. *J. S. Popper, supra; cf., United States* v. *Thompson, supra.*

Conclusion

An administrative hearing should not be reopened for the taking of additional evidence which goes solely to issue of credibility in collateral matters, which does not controvert a single fact at issue in the administrative proceeding, and which could not change the result. For these

reasons, it is respectfully submitted that the motion of the petitioners should be denied.

Respectfully submitted, (S.) George R. Gallagher, to General Counsel, Subversive Activities Control Board; (S.) Carl H. Imlay, Attorney, Department of Justice; William F. Tompkins, Assistant Attorney General, Internal Security Division; Harold D. Koffsky, B. Franklin Taylor, Jr., Attorneys, Department of Justice.

[fol. 2080] Certificate of Service (Omitted in printing).

[fol. 2081] [File endorsement omitted]

In United States Court of Appeals

[Title omitted]

Before: Prettyman, Bazelon, and Danaher, Circuit Judges, in Chambers.

Order Setting Case for Reargument—Filed September 13, 1954

It is ordered by the Court that this case be, and it is hereby, set for re-argument on Thursday, October 21, 1954, at 2:00 P. M., and that each side be allowed one hour for said re-argument.

Counsel shall address themselves primarily to (1) the validity of the Internal Security Act of 1950 if it be deemed to be not merely a registration statute, that is if it be considered an integrated whole, including the so called sanction provisions and (2) the effect, if any, of the Communist Control Act of 1954, upon the order here under review.

The motion filed August 11, 1954, by the Communist Party, petitioner herein, for leave to adduce additional evidence may be argued in conjunction with this re-argument.

It is further ordered by the Court that briefs or memoranda upon the matters above described may be filed at any time prior to the close of business Friday, October 8, 1954;

and reply briefs may be filed prior to noon Tuesday, October 19, 1954. Said briefs may be typewritten or otherwise reproduced, provided that at least an original and three perfectly legible copies are supplied.

Per Curiam.

Dated: September 13, 1954.

[fol. 2082] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE—Filed December 23, 1954

Upon consideration of petitioner's motion for leave to adduce additional evidence in the administrative proceeding before the respondent, of respondent's memorandum in opposition thereto and of the argument of counsel on said motion, it is

Ordered by the Court that the aforesaid petitioner's motion be, and it is hereby, denied.

Per Curiam.

Dated: December 23, 1954.

Circuit Judge Bazelon did not participate in the above order.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT

On Petition for Review of Order of the Subversive Activities Control Board

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Decided December 23, 1954

Mr. Vito Marcantonio (who died subsequent to the argument), *Mr. John J. Abt*, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, and *Mr. Joseph Forer* for petitioner.

Miss Beatrice Rosenberg, Attorney, Department of Justice, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, *Mr. George R. Gallagher*, General Counsel, Subversive Activities Control Board, and *Mr. David B. Irons*, of the bar of the Supreme Court of Texas, *pro hac vice*, by special leave of Court, with whom *Mr. Frank R. Hunter, Jr.*, Assistant General Counsel, Subversive Activities Control Board, *Messrs. Harold D. Koffsky* and *Carl H. Imlay*, Attorneys, Department of Justice, and *Messrs. Leo M. Pellerzi* and *Ned O. Heinish*, Attorneys, Subversive Activities Control Board, were on the brief, for respondent. *Mr. William A. Paisley*, Attorney, Department of Justice, entered an appearance for respondent.

Before PRETTYMAN, BAZELON and DANAHER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* This is a petition to review an order of the Subversive Activities Control Board, which holds that petitioner is a Communist-action organization within the meaning of the Subversive Activities Control Act of 1950 [1] (Section 3)[2] and as such must register pursuant to the provisions of that Act.[3] The proceeding before the Board was initiated by a petition filed by the Attorney General. Testimony was received by a panel of the Board, the Attorney General presenting twenty-two witnesses and the Party-respondent three witnesses. Documentary evidence was introduced, briefs, proposed findings, and reply briefs were filed, and oral argument was heard. The panel issued a recommended decision, and exceptions to it were filed. Oral argument was had before the full Board, and the Board issued a report and the order here under review.

Petitioner's attack is in three parts, one on the Act itself, one on the order of the Board, and the third on "other reversible errors". In Part One of petitioner's brief the Act is asserted to be invalid upon four grounds. These are: The Act is an outlawry statute, designed to outlaw the Communist Party by legislative fiat; the Act violates the due process clause and is also a bill of attainder; the Act violates the constitutional prohibition against compulsory self-incrimination; and the Act violates the First Amendment. In Part Two of the brief the order of the Board is said to be invalid upon three grounds. The first ground is that the Board so applied the pro-

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[1] This Act is Title I of the Internal Security Act of 1950, 64 STAT. 987 *et seq.*

[2] 64 STAT. 989, 50 U.S.C.A. § 782.

[3] 64 STAT. 993, 50 U.S.C.A. § 786.

visions of Section 13(e)[4] of the Act as to magnify their irrationality. The second ground is that the Board violated the First Amendment. The third ground is that the Board members were subjected to extra-legal pressures and were biased. Part Three of the brief presents six additional assertedly reversible errors. They are: (1) The order is based upon conduct prior to the Act; (2) the Board's findings as to petitioner's pre-Act conduct are based upon incompetent and discredited evidence; (3) the findings with reference to the world Communist movement are not supported by evidence; (4) the findings with reference to the facts are not supported by a preponderance of the evidence; (5) the order must be set aside if it is invalid upon any ground; and (6) the appointments to the Board were made in violation of the Constitution.

We shall not follow petitioner's arrangement of its contentions, but in the course of our consideration we will deal with them all. Because this is a case of first impression, involving a new statute of importance, and because the points of both law and fact are many and vigorously pressed, our discussion will be at some length.

We look first at the statute. It opens with findings of the existence and the nature of "a world Communist movement" in a long recitation of fifteen paragraphs dealing with the nature of the movement abroad and in the United States. The Act defines a Communist-action organization. It declares certain actions to be unlawful. These actions are three in number: (1) for any person to agree with another person to contribute to the establishment in this country of a totalitarian dictatorship controlled by a foreign organization (except by constitutional amendment); (2) for an officer or employee of the United States to communicate to any agent of a foreign government or of any Communist organization any in-

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[4] 64 STAT. 999, 50 U.S.C.A. § 792(e).

formation classified as affecting the security of this country; and (3) for any foreign or Communist agent to receive such information. The next two sections of the Act contain certain prohibitions directed to members of organizations registered under the Act. Then the Act requires the registration of Communist-action and Communist-front organizations, annual reports from such organizations, and registration of members of Communist-action organizations. It provides that the Attorney General keep public registers of Communist organizations. The Act prohibits certain privileges to registered organizations. It establishes the Board and provides for proceedings before it. It delineates a series of considerations which must be made by the Board. It provides for judicial review. Penalties for violation of the Act are provided. A series of amendments to other statutes, such as the Nationality Act of 1940 and the Alien Registration Act of 1940, are made. The last section of the Act is a separability provision.

I

We reject the Government's contention that we must consider the statute as a registration measure only. The argument is that: The several statutory provisions are separable; the Board's power is to require registration and no more; its order does no more than that; therefore the statute and the order must be treated by us as involving registration and no more. It is true that the provisions of this statute are separable. The Act contains a separability section [5] reading:

> "SEC. 32. If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby."

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[5] Sec. 32, 64 STAT. 1019.

And so, if one provision of this Act is invalid, its fall would not necessarily drag down the remainder of the Act; all other provisions would remain unaffected. But that is not the point of the Government's contention. The Government contends that each provision,[6] even if all are valid, must be treated separately from the others, as though each were an independent enactment unrelated to the others. The question whether one section of a statute can stand when other sections are invalid, and the question whether one valid section of a statute can be treated separately and independently of all other valid sections, are two different questions. The former would raise a separability question. The latter is governed by the elementary rule that a statute must be considered as a whole, in its entirety, all parts together.[7] The Government's argument is, in effect, that this statute is not an integrated unit but is a collection of separate measures. But we think this is not that sort of statute. The mandatory provisions, called "sanctions" in this litigation, in Sections 5, 6, 10 and 11,[8] are attached directly to registration. For example, if an organization is registered, or ordered to register, its mail must be marked and its broadcasts identified. We cannot strip the registration of its attachments. We cannot consider the registration requirement as though it were

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[6] The Government agrees that the disclosure of information required by Section 7(d) may well be considered with the registration requirement.

[7] CRAWFORD, STATUTORY CONSTRUCTION § 165 (1940); cases collected and cited at 50 AM. JUR., Statutes § 352.

[8] "Sanctions" were also imposed by Sections 22 and 25 upon alien members of a registered organization, but those sections have been superseded by the Immigration and Nationality Act of June 27, 1952, 66 STAT. 163, 8 U.S.C.A. §§ 1182, 1251, 1424, 1451.

bare, when it is not bare either in the statute or in factual consequences.

The Government relies upon *Electric Bond Co.* v. *Comm'n.*[9] That case involved the validity of those sections of the Utility Holding Company Act which required registration. It was urged that those sections and various other control provisions were an integrated whole and had to be considered together, as though interdependent one upon the other. The Supreme Court held that both the structure of the Act and the intent of Congress were clear that each provision had a purpose and effect of its own, that the provisions constituted groups of regulations, and that as a practical matter they could be sustained and enforced separately. It held that the statute was not an integrated unit. We think the statute now before us is an integrated unit, although invalid sections may be excised. We must treat the registration requirement as though it involves the sanctions in Sections 5, 6, 10 and 11.[10]

We later point out that Section 8, providing for registration by individual members of an organization, is not attached to organization registration but on the contrary applies when the organization does not register. We think it a separate measure from organization registration.

In the disposition of the problems presented to us we will follow the course indicated by the foregoing. We will consider the so-called "sanction" and other provisions which depend upon or flow from registration of the organization. In so far as such sections are valid we will treat them as integrated with the registration requirement and thus involved in the order before us. In so far as any of such provisions are invalid they may

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[9] 303 U.S. 419, 82 L.Ed. 936, 58 S.Ct. 678 (1938).

[10] See note 8, *supra*.

be excised, being severable, and the valid remainder will constitute the integrated unit. We will lay aside consideration of provisions which do not depend upon organization registration but are in lieu of or take effect in the absence of such registration. Factual bases for consideration of such sections are not before us.

We also quickly dispose of contentions by petitioner that the statutory procedures, as procedures, are inadequate or otherwise invalid. Full administrative hearing (Section 13), full findings (Section 13), and full judicial review (Section 14) are provided. There is no insufficiency in this respect so far as the statute is concerned.

II

The basic provision of the statute, as it concerns the present litigation, is that a Communist-action organization must register with the Attorney General. Such an organization is defined by the statute [11] as follows:

> "(3) The term 'Communist-action organization' means—
>
> "(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and
>
> "(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title."

[11] Sec. 3, 64 STAT. 989, 50 U.S.C.A. § 782.

Congress defined "the world Communist movement" in several paragraphs in Section 2. of the statute. It is enough for our purposes to quote paragraph (1):

> "(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization."

For the purpose of testing the validity of the statute itself, as a statute, we must assume that the conditions with which it purports to deal actually exist. The question upon validity is: If the conditions recited in the statute as necessary requisites for action under the statute do actually exist, is the statutory plan for dealing with them valid? The question whether a certain organization is subject to the statute is a different and separate question.

We turn first to the general power of government in the premises. Antipathy to domination or control by a foreign government, or even to interference on the part of a foreign government, is a basic policy in this nation. It was one of the compelling reasons for the making of the Constitution in replacement of the Confederation. Frequent references were made to it in the Constitutional Convention. Mr. Madison went all the way back to the intrigues practiced among the Amphictionic Confederates by the kings of Persia as a citation of the danger of foreign interference.[12] It was the premise of the action of the Government, through President Wash-

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[12] 1 FARRAND, RECORDS OF THE FEDERAL CONVENTION 319 (1911).

ington, in respect to Citizen Genet. It ran through the War of 1812 and the Monroe Doctrine, the fight over the League of Nations, and down to such qualms as there are concerning the United Nations. This country has always unequivocally repudiated any action which has seemed to contain the element of foreign control over our governmental affairs. To declare unconstitutional a statute which would require the registration of an organization, substantially directed, dominated or controlled by a foreign government or by an organization such as the world Communist movement defined in this statute, would be to deny one of the purposes and one of the best-established policies of the government which was created by the Constitution. This is true whether or not the foreign government is coupled with a particular movement.

Self-preservation is a high prerogative of any sovereignty. "Security against foreign danger is one of the primitive objects of civil society," wrote James Madison in the Fortieth *Federalist* paper. And he continued, "It is an avowed and essential object of the American Union." It seems to us that, however high in priority the right of self-preservation is among the prerogatives of sovereign powers in general, it is peculiarly so in respect to the Federal Government presently established in this country. As we conceive the matter, the government established by our Constitution is an instrument for service, particularly for the protection of the security of the people whose servant it is; it is a working tool the value of which lies in its usefulness. It was established by the people themselves; it did not arise of its own accord; it was not imposed from without. Since it was created by the people for the security of the people, especially against foreign encroachment, it has supreme duties both to protect its own existence and to insure that unidentified efforts on behalf of foreign agencies devoted to its disestablishment do not occur. It seems clear beyond question that, if the conditions

described in this statute do actually exist, the presently existing Federal Government has power to prohibit within its borders activity of the sort described; *a fortiori* it has power to require identification of such activities and to impose conditions short of proscription. If there is a world movement for the destruction of all presently existing national governments and for the establishment of a world dictatorship under Communist auspices, and if a given organization in this country is actually under the control of the leaders of that movement and is acting to achieve its objectives, we perceive no reason why the presently existing government in this country should not prohibit the unidentified activity of such an organization or withdraw from its members protections and privileges otherwise afforded by that government. We perceive no basic reason why that government must stand helpless before activities such as those described in this statute.

III

We come next to the place of the First Amendment in our problem. The initial inquiry is a general question whether the subject matter of the statute is such that impingement upon First Amendment rights may be imposed. If the answer to that query be affirmative, the next inquiry is a specific question whether the restrictions imposed by the statute are reasonably calculated to effectuate the remedial purposes being sought and so are valid although impingements upon the protected rights. We discuss this latter question later in this opinion.

We make the same assumption here that we made in *Barsky* v. *United States*.[13] We assume, without deciding, that this statute will interfere with freedoms of speech

[13] 83 U.S. App. D.C. 127, 167 F.2d 241 (D.C.Cir. 1948), *cert. denied*, 334 U.S. 843, 92 L.Ed. 1767, 68 S.Ct. 1511 (1948).

and assembly. It does not interfere in terms, but we think a realistic view must be taken of restrictions on First Amendment freedoms, and realistically the registration and sanction provisions will erect restrictions upon what otherwise might be a wider latitude of expression. The problem is whether the restrictions imposed are valid in this situation.

In the Party's argument an effort is made to cast the entire controversy over Communism into the form of an ideological or philosophical difference of opinion. It is true that there are such differences of opinion in respect to Communism, and controversy does rage in ideological and philosophical circles. But the problem before us deals with government, and government has intensely practical as well as theoretical aspects. Its aspects may be freely discussed in philosophical dissertations, but in the field of action a government must be realistic and factual. The right to free expression ceases at the point where it leads to harm to the Government. The epigram which has become classic as a designation of that point is "clear and present danger". When danger to government is clear and present, the right of unrestricted speech gives way as do the other basic rights of liberty and life. The "clear" in that epigram is not limited to a threat indubitably etched in every microscopic detail. It includes that which is not speculative but real, not imagined but actual. The "present" in the epigram is not restricted to the climactically imminent. It includes that which exists as contrasted with that which does not yet exist and that which has ceased to exist.

The activities of a world Communist movement such as that described in this statute and of organizations in this country devoted to its objectives constitute a clear and present danger within the meaning of any definition of the point at which freedom of speech gives way to the requirements of government security. The basic

theory of Communism that all presently existing nationalist governments be superseded by a stateless world organization under a proletarian dictatorship, the domination of one world power with all its assets by the Communists, the succession of national capitulations to the forces of that group, and the declared intentions of its leaders in respect to the remainder of the world, are reflected in the recitations in this statute and, moreover, are historic facts which cannot be disputed. We cannot at the present time treat the program and policies of the world Communist movement as a dialectic debate.

A few references will support the proposition. In the *Dennis* case [14] the Supreme Court considered the statute (known as the Smith Act) in which Congress made it unlawful for any person knowingly or wilfully to advocate, etc., the desirability, etc., of overthrowing any government in the United States by force or violence or to organize any society of persons who teach such overthrow. Holding that the power of Congress to protect the Government is beyond question, the Court said: "The question with which we are concerned here is not whether Congress has such *power*, but whether the *means* which it has employed conflict with the First and Fifth Amendments to the Constitution." [15] It held that the Government need not wait "until the putsch is about to be executed"; [16] that, if the Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required.

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[14] Dennis v. United States, 341 U.S. 494, 95 L.Ed. 1137, 71 S.Ct. 857 (1951).

[15] *Id.*, 341 U.S. at 501.

[16] *Id.* at 509.

An attempt to overthrow the Government by force, the Court held, even though doomed from the outset, is a sufficient evil for Congress to prevent, and a conspiracy to advocate, as distinguished from the advocacy itself, can be constitutionally restrained, because the existence of the conspiracy creates the danger.

Moreover, the right to unimpeded expression of views does not apply to unimpeded conduct. That the protection which surrounds speech does not encompass action is well established. *Thomas* v. *Collins* [17] is a sufficient citation. Thomas had been committed for contempt for violating an order of a Texas court. Texas by statute required labor union organizers to secure organizers' cards before soliciting members. A mass meeting had been arranged in a campaign to organize employees at a plant near Houston. Thomas was to address the meeting. He was served with an order of the court, which mentioned the prospective speech and enjoined him from soliciting memberships without an organizer's card. The Supreme Court held that "a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." [18] But the Court went on to say:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable

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[17] 323 U.S. 516, 89 L.Ed. 430, 65 S.Ct. 315 (1945).

[18] *Id.*, 323 U.S. at 540.